IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 60 OF 2006

SHRI DATTU NILU FAL DESSAI(DECEASED) THROUGH L.RS., ... Appellant

Versus

SHRI SHAUNAK PHATORPEKAR,QUEPEM GOA ... Respondent

Ms. Susan Linhares, Advocate for the appellants.

Mr. S. S. Kakodkar, Advocate for the respondent.

Coram:- S.A.BOBDE, J.

Date:- 29th March, 2007

P.C.

This second appeal is filed by the defendant against the concurrent finding of both the Courts below that the respondent is the owner of the suit property and is, therefore, entitled to an injunction restraining the appellants from interfering with the possession of the suit property and from doing any construction on any portion thereof.

2. The learned Counsel for the appellants submitted that on a portion of the suit property i.e. Plot X-2 there was a cattle shed, in respect of which the appellant had become the owner by adverse possession. Therefore, according to the appellant, the two Courts below could not have held that the plaintiff was the owner of the suit property. There appears to be no merit in this submission in view of the concurrent findings of the two Courts below. The trial Court has dealt with the question fully and held that the appellant cannot claim any prescriptive title to the plot X-2 and that the appellant has not pleaded that he has exercised any title hostile to the plaintiff i.e. the respondent.

3. The learned Counsel for the appellants submitted the respondent had earlier filed a suit against the appellant and that is indicative of the fact that the appellants were owners of the plot X-2 by way of adverse possession. It is not possible to accept this submission. In any case, that suit was dismissed in default and merely filing of the suit cannot give rise to any such inference claimed by the appellants.

4. Having held that the plaintiff-respondent is owner of the suit property, having acquired a title thereof, I am of the view that the decree for injunction is in accordance with law. Apparently, the appellants attempted to make some construction on the suit property. An injunction, therefore, is clearly warranted.

5. Mr. Kakodkar, the learned Counsel for the respondent states that there was an injunction running against the appellants throughout the trial and at the appellate stage.

6. In the circumstances above, there is no merit in the appeal which does not give rise to any substantial question of law and is, therefore, dismissed.

S.A.BOBDE, J.

ssm.